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PR-11

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195449

DATE: September 27, 1979

MATTER OF: Arcata Associates, Inc.

[Protest of]
DIGEST:

- DL602873*
1. Determination by procuring agency to withdraw solicitation set aside for minority business under section 8(a) of Small Business Act is not for review under bid protest function of General Accounting Office.
 2. Fact that agency may have encouraged other firms to prepare for unrestricted procurement while pursuing negotiations with 8(a) firm does not evidence bad faith by agency in pursuing negotiations under 8(a) program.

Arcata Associates, Inc. (Arcata) protests the Navy's termination of negotiations with the firm which were conducted under the Small Business Administration's (SBA) 8(a) program and the solicitation of the Navy's requirements for maintenance engineering services at the Combat Systems Technical Schools Command, on an unrestricted basis.

DL602874

Earlier, Arcata protested to our Office on this basis; we closed our file on the matter when the Navy informed us that it had canceled the unrestricted solicitation and had resumed negotiations with Arcata. Arcata now contends that the Navy subsequently rejected the firm's proposal on the basis of concerns which exceeded the statement of work. In addition, the protester believes the Navy encouraged other firms to prepare for an unrestricted procurement while the Navy was pursuing negotiations with the protester on a restricted basis under the 8(a) program. The protester argues

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that this later action amounted to a "blatant breach of good faith.") For the following reason we deny the protest.

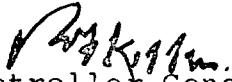
Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with any Government agency with procuring authority and to arrange for the performance of such contracts by letting subcontracts to small businesses or other concerns. By statute, a Government contracting officer, however, is authorized "in his discretion" to let the contract to SBA upon terms and conditions agreed to between the SBA and the procuring agency. 15 U.S.C. § 637(a)(1) (1976) as amended by Pub. L. No. 95-507, § 202, 92 Stat. 1761. Therefore, we have held that the contracting agencies and SBA have broad discretionary authority in this area. See Kings Point Manufacturing Company, Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264. This is so regardless of whether the action being challenged relates to a procuring agency decision not to set aside a procurement for a noncompetitive section 8(a) award, Baltimore Electronics Associates, Inc., B-185042, February 17, 1976, 76-1 CPD 105; Alpine Aircraft Charters, Inc., B-179669, March 13, 1974, 74-1 CPD 135 or to an agency decision to withdraw a procurement from the section 8(a) program. Newton Private Security Guard and Patrol Service, Inc., B-186756, November 30, 1976, 76-2 CPD 457. Thus, agency decisions not to enter into a section 8(a) contract, including decisions based on the evaluation of proposals submitted under the 8(a) program, generally are not matters for legal review by this Office under our bid protest function.

In very limited situations, such as where bad faith is alleged, we will examine the circumstances surrounding the withdrawal of a procurement from the 8(a) program. Arcata here alleges that the Navy acted in bad faith by encouraging potential offerors to prepare proposals for an unrestricted procurement at the same time the Navy was negotiating with Arcata under the 8(a) program. Assuming this is true, we do not view the Navy's actions as tantamount to bad

Could not be procurement

faith. It is not improper for an agency to prepare for or even conduct an unrestricted procurement while discussions are taking place with a potential 8(a) sub-contractor, see, e.g. Alpine Aircraft Charters, Inc., supra, since the agency may need to make an immediate award if the 8(a) negotiations are not successful.) We see nothing in Arcata's complaint which supports the assertion that the Navy's actions here resulted from bad faith.

(The protest is summarily denied.)


Deputy Comptroller General
of the United States